

RECEIVED
U.S. DISTRICT COURT
MASSACHUSETTS

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ABRAHAM TAMATEY
Petitioner, Pro Se

v.

THOMAS M. HODGSON,
SHERIFF, BRISTOL COUNTY
Respondent-

C.A. No. 05-11528-WGY

PETITIONER'S RESPONSE TO MOTION TO DISMISS

Petitioner, ABRAHAM TAMATEY in filing a response to Respondent's motion to dismiss states that respondent is fully aware of the fact that Petitioner's appeal is currently pending in the U.S Court of Appeals of the first circuit even though he has no stay of deportation from that court. [Exhibit one]

In considering a motion to dismiss for failure to state a claim, a court must take the allegations in the plaintiff's pleadings as true and must make all inferences in favour of the Plaintiff. Rivera v. Rhode Island, 402 F. 3d, 27, 33 (1st Cir 2005); see also, Pena-Borvero v. Estremada, 365 F. 3d 27, 11 (1st Cir 2004). The High Court has already held that "It is important

to focus on the [Petitioner's] allegations describe the constitutional rights at stake" Id citing Collins v. City of Harker Heights, 503 U.S. 115, 125 (1992).

- Mr Tamatey alleges the following
- 1. That respondents have detained him in their custody for the past year and seven months even though they are aware he is suffering from a life threatening disease of aids.
- 2. His application to be granted asylum was denied by the Immigration Judge.
- 3. His appeal to the BIA was denied on December 3, 2004.
- 4. His Appeal to the First Circuit of appeals was late because he could not afford counsel.
- 5. On July 10th 2005 the Court of appeals informed him he will be given another opportunity to continue his appeal and a copy of his brief was sent to respondent.
- 6. The Court of appeals have informed respondent it will be ruling on his case sometime

around November 2005 even though he was not given a stay of deportation. [Exhibit 2]

7. His six months custody review time expired on June 3, 2005.
8. Petitioner hopes to be allowed to stay in this country by the Court of Appeals because removing him to Ghana will amount to a death warrant due to lack of medical help for his terminal illness.
9. Petitioner's continued custody at this time is not humane and not in the interest of the United States who should have compassion for people in his position. In fact, a reputable organization in Boston are willing to accodate and care for him in case he is released [Exhibit 3].

Conclusion

For the foregoing reasons, this Honorable Court should grant Mr Tamatey the following reliefs

- ① Stop respondent from deporting him until this court have an evidentiary hearing on the merits of his case, or rule on his case.

2. Stop respondents from moving him out of the district of Massachusetts until the end of this case to stop an irreparable damage.
3. Grant petitioner any relief this Honorable Court might deem fit.

Respectfully Submitted

Abraham Tamatey
ABRAHAM TAMATEY

Dated: 8-6-05

CERTIFICATE OF SERVICE

I, Tamatey Abraham do hereby certify that I have on this 6th day of August 2005 served via mail posted at Bristol HLC U.S. Post Office box, a true and accurate copy, of the notice to oppose respondent's motion to dismiss to

FRANK CROWLEY
Special Assistant U.S. Attorney
Department of Homeland Security
P.O. Box 8728
JFK Station
BOSTON MASS 02114

Signed under the pains and penalties of perjury

Date: 8-6-05

ABRAHAM TAMATEY
400 Faunce Corner Road
North Dartmouth Innakeet# 132671
MA 02747

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

[Exhibit one]

NO. 05- 1045

ABRAHAM K. TAMATEY (Pro Se)

v.

JOHN ASHCROFT, ATTORNEY GENERAL

BRIEF OF APPEAL IN HIS REMOVAL PROCEEDINGS

Now comes, Abraham K. Tamatey (here in after " Mr. Tamatey" or " Respondent) Pro Se, Petitions this Honorable Court to Allow his brief. As grounds therefore, Mr. TAMATEY States as follows;

1. On April 28th 2004 the Immigration Judge denied Respondents Asylum Claim.
2. Respondents appeal to the Board of Immigration Appeals was denied on December 3rd 2004.

[Exhibit one]

PROOF OF SERVICE

Civil Case

File No: 05-1045

On July 11th I Abraham K. Tamatey (Pro Se) mailed a copy of this brief of his appeal and the decision from the Board of Immigration Appeals and any attached pages to DHS Office of the District Counsel at the following address; P. O. Box 8728 Boston MA. by placing it in the mail box where am detained.

Date July 11th 2005

abraham tamatey

ABRAHAM K. TAMATEY (Pro Se,

Bristol County Sheriff Office

400 Corner Road

Noorth Dartmouth MA.02747.

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT
(617) 748-9057

Dated: July 15, 2005

No. 05-1045

[Exhibit 2]

ABRAHAM K. TAMATEY

Petitioner

v.

JOHN ASHCROFT, Attorney General

Respondent

NOTICE

Ten copies of brief for appellee or respondent are due to be filed by **8/15/05**, with proof of service of two copies on opposing counsel for each adverse interest.

The First Circuit Rulebook, which contains the Federal Rules of Appellate Procedure, the Local Rules, and the Court's Internal Operating Procedures, is available on the Court's website at www.cal.uscourts.gov. **PLEASE NOTE THAT THE COURT'S WEBSITE ALSO CONTAINS TIPS ON FILING BRIEFS AND APPENDICES, INCLUDING A CHECKLIST OF WHAT YOUR BRIEF MUST CONTAIN.**

PLEASE BE AWARE THAT FAILURE TO FILE A BRIEF IN COMPLIANCE WITH THE FEDERAL AND LOCAL RULES MAY RESULT IN THE REJECTION OF THE BRIEF AND MAY RESULT IN THE APPELLEE NOT BEING HEARD AT ARGUMENT. See Local Rules 3 and 45.

Presently, it appears that this case may be ready for argument or submission at the coming November, 2005 session.

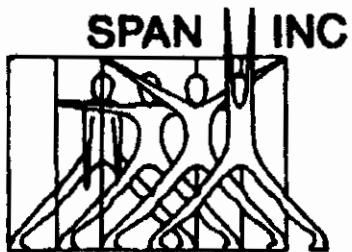
Counsel are advised that extensions of time are normally not allowed without timely motion for good cause shown.

Richard Cushing Donovan, Clerk

To: Michael J. Sullivan, USA

cc: Abraham K. Tamatey
Michael J. Sullivan, USA

Case Manager: Marilyn 617-748-9026



110 Arlington Street Boston, MA 02116-5377
Phone (Voice & TTY): 617/423-0750 FAX: 617/482-2717

[Exhibit 3]

February 22, 2005

Re: Abraham Tamatey

To Whom It May Concern,

This letter will serve to verify that Mr. Abraham Tamatey has been referred to Span Inc. to assist his access to rehabilitative and reintegration services. Mr. Tamatey will be meeting with our reintegration case manager, Rebecca Vega on 3/3/05 to complete an assessment and intake for acceptance into our program Transitional Intervention Project (TIP). We will assist him with referrals to residential substance abuse treatment, medical and mental health services, transitional and long term housing and for other services to meet his needs.

Span provides outpatient counseling for offenders and ex-offenders with reintegration and substance abuse issues and offers information, referral, and advocacy services to connect clients with medical, social services, employment, and housing agencies as needed. TIP provides intensive case management services for newly released ex-offenders assisting clients in obtaining services needed to help them stay healthy, while preventing a return to prison.

If you have any questions or need additional information about Span, Inc. and our services please feel free to contact Rebecca Vega at (617) 236-1788.

Respectfully yours,

Gene Borden

Gene Borden
Assessment Coordinator, TIP Program

THIS AGENCY
SPONSORED BY

